Supreme Court, U.S.
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No. 02-1253

In The Supreme Court of the United States

FRED RIGGS, DONNA SINGER and AL DICKSON,

Petitioners,

v.

SAN JUAN COUNTY, SAN JUAN HEALTH SERVICES DISTRICT, County Commissioner J. TYRON LEWIS, County Commissioner LYN STEVENS (official capacity only), Commissioner MANUAL MORGAN (official capacity only), RICK BAILEY, County Attorney CRAIG HALLS, REID WOOD, KAREN ADAMS, ROGER ATCITTY, PATSY SHUMWAY (official capacity only), JOHN LEWIS, LAUREN SCHAFER, TRUCK INSURANCE EXCHANGE and ATTORNEY DENNIS ICKES, and as yet unnamed JOHN and JANE DOES, in their official and individual capacities, jointly and severally,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS SAN JUAN HEALTH SERVICES DISTRICT, ROGER ATCITTY, KAREN ADAMS, PATSY SHUMWAY, JOHN LEWIS, REID WOOD AND LAUREN SCHAFER TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the court of appeals erred in (i) affirming the district court's dismissal of petitioners' claim to enforce certain orders of the Navajo tribal court as against respondents Truck Insurance Exchange and Dennis Ickes and (ii) remanding petitioners' claim as against the Health District and San Juan County respondents for an analysis of subject matter jurisdiction pursuant to *Montana v. United States,* 450 U.S. 544 (1981)?

PARTIES TO THE PROCEEDINGS

Petitioners

Petitioners Fred Riggs, Donna Singer and Al Dickson are plaintiffs below and plaintiffs in the action before the Navajo tribal court.

Respondents

Respondents San Juan Health Services District, Reid Wood, Karen Adams, Roger Atcitty, Patsy Shumway, John Lewis and Lauren Schafer (collectively "respondents" or Health District respondents") are defendants below and defendants in the action before the Navajo tribal court.

Additional Parties in this Court

San Juan County, J. Tyron Lewis, Lyn Stevens, Manuel Morgan, Bill Redd, Rick Bailey, Craig Halls (collectively "San Juan County respondents"), Truck Insurance Exchange ("Truck Insurance") and Dennis Ickes are additional respondents, defendants below, and defendants in the action before the Navajo tribal court.

Additional Parties Below

Dr. Steven MacArthur, Michele Lyman, Helen Valdez, Candace Laws, Paul Kieth, Dorothy Kieth, Baxter Benally, Melvin Capitan, Candace Holiday, Percy Mitchell, Eva Pleasant, Amy Terlaak and Linda Cacapardo were additional plaintiffs below, but were not parties in the action before the Navajo tribal court.

PARTIES TO THE PROCEEDINGS – Continued

Cleal Bradford, John Housekeeper, Gary Holliday, Dr. James Redd, Dr. Val Jones, Dr. Manfred Nelson, Marilee Bailey, Ora Lee Black, Laurie Wallace, Carla Grimshaw, Gloria Yanito and Julie Bronson were additional defendants below, but were not parties in the action before the Navajo tribal court.

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OPINIONS BELOW

The December 28, 1999 preliminary injunction entered by the District Court of the Navajo Nation, Judicial District of Shiprock, New Mexico, is reprinted in the appendix to the petition for a writ of certiorari ("P. App.") at 70a-104a. The Navajo tribal court entered three additional orders in furtherance of the December 28, 1999 preliminary injunction. These orders, dated March 1, 2000, March 2, 2000 and March 15, 2000, are reprinted in the appendix hereto ("R. App.") at 1a-20a, 21a-22a and 23a-25a, respectively. In the action below, petitioners sought enforcement of these orders entered by the Navajo tribal court.

The October 30, 2000 decision of the United States District Court for the District of Utah, Central Division, is unreported and is reprinted at P. App. 26a-51a. The October 30, 2000 order dismissed petitioner's claim seeking enforcement of the Navajo tribal court preliminary injunction with respect to respondents San Juan County, San Juan Health Services District, J. Tryon Lewis, Lyn Stevens, Manual Morgan, Rick Bailey, Craig Halls, Reid Wood, Karen Adams, Roger Atcitty, Patsy Shumway, John Lewis and Lauren Schafer. The December 12, 2000 decision of the District Court is unreported and is reprinted at P. App. 52a-69a. Pursuant to the December 12, 2000 order, the District Court dismissed the claim seeking enforcement of the tribal court preliminary order with respect to respondents Dennis Ickes and Truck Insurance.

The October 7, 2002 decision of the United States Court of Appeals for the Tenth Circuit is reported at 309 F.3d 1216, and is reprinted at P. App. 1a-25a. On November 8, 2002, the court of appeals denied a petition for panel

rehearing submitted by petitioners as well as a petition for rehearing en banc submitted by the respondents. The Order denying the petitions is reprinted at P. App. 105a-106a.

BASIS FOR JURISDICTION

The decision of the court of appeals was entered on October 7, 2002, and the court of appeals denied the petitions for panel rehearing and rehearing en banc on November 8, 2002. Petitioners Riggs, Singer and Dickson filed the petition for a writ of certiorari in the United States Supreme Court on February 6, 2003.

In reliance on Supreme Court Rule 15.3, this Brief in Opposition to the petition for a writ of certiorari is filed within thirty days from February 26, 2003, the date on which the petition was placed on the docket.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, REGULATIONS AND ORDINANCES

Respondents do not believe that the constitutional provisions, treaties, statutes, or other authorities identified by petitioners as involved in this case are relevant to the question of whether the court of appeals erred in (i) affirming the district court's dismissal of petitioners' claim to enforce certain orders of the Navajo tribal court as against respondents Truck Insurance and Dennis Ickes and (ii) remanding petitioners' claim as against the Health

District and San Juan County respondents for an analysis of subject matter jurisdiction pursuant to *Montana v. United States*, 450 U.S. 544 (1981).

STATEMENT OF THE CASE

The Health District is a special service district organized by respondent San Juan County pursuant to Utah Code Ann. § 17A-2-1204. The individual Health District respondents are employees of the Health District or members of its board of trustees. The individual San Juan County respondents are County officials or employees of San Juan County.

The Health District operates a hospital in Monticello, Utah, as well as several out-patient clinics. Prior to January 1, 2000, the Health District operated an outpatient clinic located in Montezuma Creek, Utah. The Montezuma Creek Clinic is located within the exterior boundary of the Navajo Reservation on fee land held in trust by the State of Utah as part of the Utah Navajo Trust Fund. P. App. at 3a. The Health District provided medical services at the Clinic to Native Americans residing on the Navajo reservation pursuant to a contract with Indian Health Services, a federal government agency. Petitioners Fred Riggs, Donna Singer and Al Dickson were employed by the Health District at its Montezuma Creek Clinic. *Id.* In approximately November 1998, the Health District terminated Singer's employment, while Riggs and Dickson remained employed by the Health District at the

Montezuma Creek Clinic until January 1, 2000, when the Health District ceased operating the clinic.[1]

In April 1999, petitioners filed a Complaint for Damages in the Navajo tribal court. P. App. at 3a. While petitioners assert that they alleged violations of Navajo law in tribal court, Petition at 8-9, the Complaint in fact asserted a broad array of claims against the Health District and San Juan County respondents, including federal civil rights claims, state law tort claims and claims based upon the Navajo Preference in Employment Act.[2] P. App. at 4a, n.2. Riggs' and Dickson's claims arose generally out of their employment relationship with the Health District, while Singer's claims arose primarily from the Health District's termination of her employment.

Respondents asserted both sovereign immunity and lack of jurisdiction as defenses to the Navajo tribal court Complaint. P. App. at 30a. Nevertheless, on December 28, 1999, the Navajo tribal court issued a preliminary injunction in which it ordered the Health District to reinstate petitioner Singer to her previous position and awarded back pay and attorneys' fees (an amount petitioners claimed was in excess of $500,000) to each of the petitioners. *Id.* at 101a-104a. Despite the fact that the Health District owned and operated the Montezuma Creek Clinic,

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[1] Since January 1, 2000, the Montezuma Creek Clinic has been owned and operated by Utah Navajo Health Systems, Inc. ("UNHS"), an entity of which Singer is the executive director. Singer, Riggs and Dickson have all been employed by UNHS at the Montezuma Creek Clinic since January 1, 2000.

[2] Respondents dispute petitioners' assertion that they are subject to the Navajo Preference in Employment Act. Petition at 8-9.

the preliminary injunction order also purported to preclude respondents from "interfering" with the management of and numerous services provided at the Clinic and directed respondents to take certain affirmative steps with respect to its operation of the Health District. *Id.* at 102a-104a. Moreover, although in their Complaint petitioners sought relief only with respect to the employment actions allegedly taken against them by the Health District, the Navajo tribal court provided broad relief to members of the Navajo Tribe in general, including prohibiting the Health District from billing Navajo Tribe members for health care services, regardless of whether the services were provided at the Montezuma Creek Clinic or at Health District facilities off the reservation. *Id.* at 103a. The order also precluded the Health District from eliminating emergency and other services on the reservation. *Id.*

In March 2000, the tribal court entered several orders supplementing the preliminary injunction, including the Order Denying Defendants' Motion to Dissolve or Modify the Preliminary Injunction Order dated March 1, 2000, R. App. at 1a; the Special Order in Aid to Satisfaction of Preliminary Injunction dated March 2, 2000, *id.* at 21a; and the Order Mandating that All Defendants' [sic] Be Bound by the Preliminary Injunction Order. *Id.* at 23a. Pursuant to these orders, the Navajo tribal court ordered respondents immediately to pay back wages and attorneys' fees, *id.* at 16a-17a; imposed a $10,000 per day penalty upon respondents in the event they failed to comply immediately with the Navajo tribal court's orders, $1,000 of which was to be paid by the individual respondents, *id.*

at 20a; and ordered that the penalty would apply during any period of appeal. *Id.*[3] The tribal court also purported to grant petitioners leave to seek immediate enforcement of its orders in any Utah or federal court. *Id.* at 22a. Finally, the Navajo tribal court permitted petitioners to add as defendants Truck Insurance, the Health District's insurer, and Dennis Ickes, counsel for the Health District and San Juan County respondents in Navajo tribal court, and the tribal court bound both of them to its previously-entered orders. *Id.* at 24a-25a.

In August 2000, petitioners filed this action in the United States District Court for the District of Utah seeking to enforce the Navajo tribal court orders discussed above.[4] Shortly after the institution of this action, respondents moved to dismiss petitioners' claims to enforce the Navajo tribal court orders based on their sovereign immunity from suit in tribal court. By Order dated October 30, 2000, the district court dismissed petitioners' enforcement claim with respect to the Health District and San Juan County respondents. P. App. at 26a. According to the district court, as political subdivisions of the State of Utah and their officials or employees, the Health District and

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[3] Petitioners mislead this Court by asserting that the tribal court "threatened" to impose a penalty of $10,000 per day against respondents. Petition at 9. In fact, the tribal court did impose the penalty and, as noted, ordered that $1,000 per day of the penalty should be paid personally by the individual respondents. R. App. at 20a.

[4] In addition to the enforcement claim asserted by petitioners, the district court action named as plaintiffs a number of individuals other than petitioners. These additional plaintiffs asserted a broad range of federal civil rights and other claims against respondents as well as other defendants. The claims of these additional plaintiffs are not at issue before the Court.

San Juan County respondents shared in the State's sovereign immunity from suit in the Navajo tribal court. *Id.* at 43a. On December 13, 2000, the district court entered an order dismissing the enforcement claim as against Truck Insurance and Ickes on the grounds the tribal court lacked subject matter jurisdiction over them. *Id.* at 52a.

Thereafter, petitioners sought and obtained certification of the October 30 and December 13, 2000 orders pursuant to Fed. R. Civ. P. 54(b). On appeal, the court of appeals reversed the district court's ruling with respect to the Health District and San Juan County respondents. *MacArthur v. San Juan County*, 309 F.3d 1216 (10th Cir. 2002); P. App. at 2a. While the court of appeals acknowledged that cross-petitioners may have been entitled to sovereign immunity from suit in the Navajo tribal court, it found that the district court should have addressed the issue of the tribal court's subject matter jurisdiction under *Montana v. United States*, 450 U.S. 544 (1981), prior to addressing cross-petitioners' claim of sovereign immunity:

> The threshold question in our review of the Navajo court judgment is whether the Navajo Nation's decision to exercise adjudicative power over County and Health District defendants passes muster under *Montana*. If, and only if, appellants overcome the heavy presumption *Montana* establishes against the existence of tribal jurisdiction will a federal court have occasion to address the sovereign immunity issue at all.

Id. at 1226; P. App. at 22a. On this basis, the court of appeals remanded petitioners' claim against the Health District and San Juan County respondents to district court for a determination of the tribal court's subject matter

jurisdiction. *Id.* at 1228; P. App. at 25a. With respect to the district court's dismissal of petitioners' claim against Truck Insurance and Ickes, the court of appeals affirmed, concluding that the Navajo tribal court lacked jurisdiction pursuant to *Montana*. *Id.* at 1223-24; P. App. at 14a-15a.

REASONS FOR DENYING THE PETITION

Petitioners argue that the petition should be granted because in remanding petitioners' claim to enforce the tribal court orders as against the Health District and County respondents for an analysis of tribal court subject matter jurisdiction under *Montana* and its progeny[5] the court of appeals acted (i) contrary to the law of other circuits, and (ii) outside its own jurisdiction. For the reasons set forth below, this Court should deny the petition.[6]

[5] The Health District respondents address only the claim that the court of appeals erred in remanding petitioners' claim as against the Health District and San Juan County respondents. This brief does not address petitioners' claims of error with respect to Truck Insurance and Ickes.

[6] The Health District respondents have also filed a Conditional Cross-Petition for a Writ of Certiorari. As set forth in the Cross-Petition, respondents believe that the court of appeals erred not for the reasons set forth by petitioners, but rather in failing to affirm the district court's dismissal of petitioners' claim as against the Health District and County respondents on the basis of sovereign immunity.

I. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH *UNITED STATES V. ENAS*

Petitioners assert that the court of appeals' decision conflicts with *United States v. Enas*, 255 F.3d 662 (9th Cir. 2001) (en banc), *cert. denied*, 534 U.S. 1115 (2002), in which the United States Court of Appeals for the Ninth Circuit held that Indian tribes have criminal jurisdiction over non-member Indians under the 1990 amendments to the Indian Civil Rights Act ("ICRA"), 25 U.S.C. § 1301, *et seq.* According to petitioners, *Enas* holds that the reach of a tribal court's inherent sovereignty is not a constitutional issue to which the courts may speak, but rather an issue which only Congress has the authority to determine. Petition at 14. From this premise, petitioners argue that the court of appeals' failure to recognize tribal court jurisdiction over non-members under 25 U.S.C. § 1302(8), which contains ICRA's equal protection mandates,[7] conflicts with the *Enas* court's finding of tribal court jurisdiction under section 1302. In addition, petitioners assert a conflict exists because the court of appeals determined that *Montana* and its progeny should govern the district court's subject matter analysis, but under *Enas*, *Montana*

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[7] The relevant portions of section 1302 provide:

> No Indian tribe in exercising powers of self-government shall –
>
> . . .
>
> (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.

25 U.S.C. § 1302(8).

and its progeny are moot. Petitioners misinterpret *Enas*, and their argument is flawed from beginning to end.

A little background is important in understanding the holding of *Enas*. In *Duro v. Reina*, 495 U.S. 676 (1990), this Court addressed whether an Indian tribe may assert criminal jurisdiction over nonmember Indians (i.e., Indians who are not members of the prosecuting tribe). The Court concluded that Indian tribes do not possess this form of inherent sovereign authority, nor had Congress delegated such authority to the tribes. *Id.* at 688. In response to *Duro*, Congress enacted amendments to ICRA (the amendments are commonly known as the "*Duro* fix") that were intended to override *Duro*. These amendments redefined tribal "powers of self-government" as

> all government powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and . . . the inherent power of Indian tribes, hereby recognized and affirmed, *to exercise criminal jurisdiction over all Indians*.

25 U.S.C. § 1301(2) (2000) (emphasis added).[8] Congress' amendment was intended to override *Duro* in two ways. First, tribes were given *criminal* jurisdiction over nonmember Indians. Second, contrary to *Duro's* historical analysis, Congress stated that such jurisdiction was inherent, not delegated by Congress.

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[8] Prior to the amendments, this provision ended after the term "Indian offenses."

Subsequent to the *Duro* amendments, in *Enas*, a non-member Indian was prosecuted for the same conduct in both tribal court and federal court. Defendant protested that the dual prosecutions violated the Double Jeopardy Clause because the tribal court's criminal jurisdiction was congressionally delegated through the *Duro* amendments and, based on *Duro's* analysis, could not be considered part of the tribe's inherent powers.[9] The district court agreed with defendant and held the Double Jeopardy Clause precluded his federal prosecution. The Ninth Circuit reversed and remanded, finding that Congress, not the federal courts, had the last say on the nature of tribal court criminal jurisdiction over non-member Indians. The Ninth Circuit further held that through the *Duro* fix, Congress had declared that tribal inherent sovereignty included criminal jurisdiction over non-member Indians.[10]

Thus, contrary to petitioners' assertion, *Enas* did not hold and does not support petitioners' argument here and

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[9] Under established principles of Constitutional jurisprudence, dual prosecutions are allowed if a tribe is prosecuting pursuant to its inherent sovereign power, as opposed to congressionally delegated power. On the other hand, if a tribe is prosecuting pursuant to congressionally delegated power, it is acting as an arm of the federal government, and the Double Jeopardy Clause precludes both tribal and federal government prosecutions. *Enas*, 255 F.3d at 664 (citing *United States v. Wheeler*, 435 U.S. 313, 328 (1978)).

[10] In its separation of powers analysis, the Ninth Circuit found that the courts have the last say with respect to Constitutional issues, while Congress can trump a court on issues of statutory interpretation by amending the statute. *Enas*, 255 F.3d at 673. The Ninth Circuit found that *Duro's* historical analysis of a tribe's sovereign power over non-member Indians was one of "federal common law," which is more akin to statutory interpretation than Constitutional issues, giving Congress the last word on such issues. *Id.* at 674-675.

in the court of appeals that section 1302(8) provides tribal courts with general jurisdiction over non-Indians, rendering *Montana* and its progeny moot. First, *Enas'* finding that tribal courts have criminal adjudicatory power over non-member Indians was based not on the equal protection provisions contained in 25 U.S.C. § 1302(8), on which petitioners relied in the Tenth Circuit, but rather on the language of 25 U.S.C. § 1301(2). Following the *Duro* amendments, section 1301(2) specifically provides that the inherent sovereignty of tribes includes criminal jurisdiction over non-member Indians. *Enas* did not suggest that the language of section 1302(8) provided any basis for jurisdiction.

Second, *Enas* addressed, and was specifically limited to, the question of a tribal court's *criminal* adjudicatory power over non-member *Indians*. This case involves the question of a tribal court's *civil* adjudicatory power over *non-Indians*. Finally, *Enas* does not support petitioners' argument that federal courts lack authority to adjudicate the issue of tribal court jurisdiction, particularly in a case involving civil jurisdiction, thereby rendering *Montana* and its progeny moot. As noted above, *Enas* involved only the issue of tribal court criminal jurisdiction over non-member Indians, not civil jurisdiction over non-Indians. Moreover, *Enas* did not hold that courts cannot adjudicate the reach of tribal court jurisdiction, but only that the historical reach of tribal sovereignty involved interpretation of the federal common-law, an issue on which Congress has the last word.

In conclusion, *Enas* does not conflict with the court of appeals' decision in this matter or suggest that tribal courts have civil jurisdiction over non-Indians.

II. THE COURT OF APPEALS DID NOT EXCEED ITS JURISDICTION IN DETERMINING THAT *MONTANA* AND ITS PROGENY GOVERN THE ANALYSIS OF A TRIBAL COURT'S SUBJECT MATTER JURISDICTION

In reliance on various statutory or other authorities, petitioners argue Congress has clearly declared that tribal court sovereignty includes civil jurisdiction over all actions arising within the exterior boundary of a reservation, whether on tribe or fee land, including actions brought against non-Indians. Based on their interpretation of *Enas*, as discussed above, petitioners argue these "clear" congressional declarations in favor of tribal court jurisdiction render *Montana* and its progeny moot and establish that the tribal court had jurisdiction over petitioners' claims. Petitioners assert that in failing to recognize the tribal court's jurisdiction and instead remanding for a subject matter analysis under *Montana*, the court of appeals acted outside of its own jurisdiction. In fact, Congress has neither declared that tribal sovereignty includes civil jurisdiction over non-Indians, nor has it delegated such power to Indian tribes. The statutes and other authorities to which petitioners cite do not even address tribal court civil jurisdiction over non-Indians, much less confirm that such jurisdiction exists.

A. 25 U.S.C. § 1302 Does Not Provide a Basis for Tribal Court Civil Jurisdiction Over Non-Indians

Petitioners argue that because 25 U.S.C. § 1302 extends certain enumerated guarantees of the Federal Constitution to "any person," rather than "any Indian," Congress has declared that tribal courts have jurisdiction

over civil claims against non-members arising on the reservation. Petitioners' argument is without merit. Section 1302(8), on which petitioners rely, provides that tribes must provide equal protection or due process to any person "within its jurisdiction." This language establishes only that the tribe owes certain obligations to those who are within its jurisdiction; it does not establish the parameters of that jurisdiction or extend tribal court jurisdiction to non-members. *See Oliphant v. Squamish Indian Tribe*, 435 U.S. 191, 196 (1978) (the extension of certain due process and equal protection guarantees to all "persons" in section 1302(8) does not demonstrate congressional intent to confer tribes with criminal jurisdiction over non-members). Petitioners' assertion that section 1302(8) established a congressional delegation of general civil adjudicatory jurisdiction over non-Indians to tribal courts for any action arising within the exterior boundaries of the reservation is absurd.

B. The 2000 Technical Assistance Act Does Not Provide Tribal Courts with Civil Jurisdiction Over Non-Indians

Petitioners next contend that Congress has declared tribal courts have civil jurisdiction over non-Indians through the 2000 Technical Assistance Act (the "2000 Act"), codified at 25 U.S.C. §§ 3651 and 3665. The 2000 Act provides for certain financial and other assistance to tribal courts by the federal government. Section 3651 of the Act simply incorporates certain general findings by Congress regarding the importance of tribal courts. However, nothing in section 3651 specifically addresses tribal court civil jurisdiction over non-members, much less provides for such jurisdiction. Similarly, section 3665 addresses generally

the authority of the tribal courts and provides that nothing shall diminish the inherent jurisdiction of such courts. Again, section 3665's general acknowledgments regarding tribal courts do not in any way create a congressional declaration that tribal court jurisdiction includes general civil jurisdiction over non-members.[11]

Petitioners also cite to a provision in the Senate report that accompanied the 2000 Act, which states that tribal courts are charged with resolving the rights and interests of both Indian and non-Indian individuals. As an initial matter, a senate report is not legislation and does not have the force of law. *See In re North*, 11 F.3d 1075, 1078 (D.C. Cir. 1995). Moreover, given that the 2000 Act did not address tribal court jurisdiction, but rather involved funding for tribal courts, the senate report accompanying the 2000 Act clearly could not demonstrate Congress' intent to delegate civil jurisdiction over non-members to Indian tribes. Finally, the provision in the report to which plaintiffs cite contains language from *Montana* and an earlier case. Congress' recognition that situations may arise in which a tribe has jurisdiction over non-Indians, consistent with *Montana*, does not equate with a specific delegation or recognition of such authority. The senate report simply provides too tenuous a link on which to imply jurisdiction.

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[11] In their petition, petitioners string together pieces of different statutes to support their assertion that Congress has declared that tribes may exercise civil jurisdiction over non-Indians in actions arising within the exterior boundaries of a reservation. Petition at 19. In that section, petitioners cite to 25 U.S.C. § 1351 for the proposition that tribes are the "most appropriate" courts for resolving civil disputes. There is no section 1351 of title 25 of the United States Code.

As the *Duro* amendments demonstrate, if Congress wishes to recognize tribal court jurisdiction beyond that recognized by the courts, it can and has done so very directly. Petitioners have failed to provide any evidence that Congress has given tribal courts civil jurisdiction over non-Indians with respect to all claims arising on a reservation. Petitioners' request for certiorari is without merit and should be denied.

C. The United States' Ratification of the United Nations Covenant on Civil and Political Rights Does Not Suggest Tribal Courts Have Jurisdiction Over Non-Indians with Respect to Claims Arising Within

Petitioners argue that the United Nations International Covenant on Civil and Political Rights ("UNICCPR"), dated December 16, 1966, and allegedly ratified by the United States in 1992, authorizes tribal courts to exercise jurisdiction over all persons, including non-Indians, on the reservation. In making this argument, petitioners rely on general language in the UNICCPR providing that "States Parties" (parties to the covenant) will promote the right of self-determination for the non-self-governing and trust territories subject to their authority. Petition at 16. This language simply does not address the jurisdiction of Indian tribal courts, nor does it provide any basis for concluding that tribal courts have authority

over non-Indians with respect to matters arising on fee land within the exterior boundary of a reservation.[12]

D. Tribal Court Jurisdiction Over Non-Indians Is Not Mandated by Executive Orders

Finally, petitioners argue that Executive Order 13175, signed by President Clinton on November 6, 2000, and a November 21, 2001 proclamation issued by President Bush as part of National American Indian Heritage month (petitioners' Lodging at L-138), somehow demonstrate that tribal courts have jurisdiction over non-Indians with respect to any claim arising within the exterior boundaries of the reservation. Executive Order 13175, along with President Bush's later proclamation, are simply general expressions of support for tribal self-government. That the executive branch has voiced continued support of tribal governments and respect for tribal self-government is simply an inadequate basis on which to imply tribal court civil jurisdiction over non-Indians for actions that occurred

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[12] Petitioners also cite language purportedly from a Department of State report regarding UNICCPR, but they neither provide a complete copy of the report nor an adequate citation. For that reason alone, the Court should disregard this argument. Moreover, a report prepared by some unidentified employee or division of the State Department provides no basis for finding a congressional delegation of tribal court jurisdiction. Finally, petitioners rely on the report's citation to *Fisher v. District Court*, 424 U.S. 382 (1976), for the proposition that this Court has held tribal courts are the proper forums for the adjudication of civil disputes involving Native Americans and non-Native Americans arising on a reservation. In fact, in *Fisher*, this Court held only that the tribal court was the proper forum for litigation where all parties were tribe members, and the dispute arose on the reservation. *Id.* at 383, 389.

on fee-owned land within the reservation. Moreover, petitioners' claim of jurisdiction is based on their assertion that Congress has provided for such jurisdiction. Declarations of the executive branch regarding tribal sovereignty and authority are irrelevant to the question of *congressional* intent.

CONCLUSION

For the reasons set forth above, the Petition should be denied.

Respectfully submitted,

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IN THE DISTRICT COURT OF
THE NAVAJO NATION
JUDICIAL DISTRICT OF SHIPROCK, NEW MEXICO

DONNA SINGER; Fred Riggs C#18570; Alison Dickson C#212,765; Plaintiffs, vs. **SAN JUAN COUNTY**; San Juan Health Service District; Rick Bailey; Reid Wood; Lauren Schafer; Craig Halls; Commissioner Bill Redd; Roger Atcitty; Commissioner Mark Maryboy[1]; John Lewis Commissioner J. Tyron Lewis; Karen Adams; Patsy Shumway[2], and other John and Jane Does as yet unnamed in their personal and official capabilities, Defendants.	SR-CV-162-99 **ORDER DENYING DEFENDANTS' MOTION TO DISSOLVE OR MODIFY THE PRELIMINARY INJUNCTION ORDER**

THE COURT having received and reviewed (1) the defendants' "Motion to Dissolve or Modify Findings, Opinion and Judgment at Preliminary Injunction" and (2) the plaintiffs' response to the same motion, hereby denies the defendants' motion, and makes the following findings of fact and conclusions of law, that will incorporate herein and add to the original Preliminary Injunction Order raised in issue, as follows:

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

I. The defendants accuse the Court throughout their motion of the Court denying the defendants due process of law in claiming the defendants were denied the services of an in courtroom certified court reporter.

Findings of Fact

The defendants requested by written motion that they be allowed to have a certified court reporter take oral transcription of the proceedings before the Court. The request was responded, in written response stipulating to the defendants motion. The Court granted the motion. The defendants never presented any qualified reporters for consideration of the Court. The Court is not responsible for what the defendants did not do.

The defendants were *never* denied the opportunity to have a Court Reporter present in the Courtroom; were *never* denied the opportunity to make further motions concerning the said reporter in the numerous hearings between April 24 and November 9, 1999; and were *never* denied the opportunity to make a written motion at any time in the last nine months. The only restriction on the reporter was that any such reporter would be able to perform their reporting services of non-Navajo, as well as Navajo speaking witnesses, and that counsel for the defendants was advised to seek out the services of the federal interpreters office in Albuquerque, New Mexico, for a listing of qualified Navajo speaking reporters – and it was likewise the case that the Court ordered the reporter to provide copies of the transcripts to both parties and this Court. The plaintiffs even concurred with the motion for the reporter.

Likewise, it was only the plaintiff Riggs, thusfar, who was prejudiced by the lack of a qualified reporter inasmuch as Navajo (his first language) was his preferred language in portions of his testimony, and he was denied the use of his own language in deference to the defense.

Conclusion of Law

The defendants were not denied due process of law and were provided with every opportunity to be heard as required by Navajo common law; by Navajo statutory law; by Navajo Rules of Civil Procedure; by applicable US law; by the Navajo Nation Bill of Rights, and by the 1968 Indian Civil Rights Act.

The defendants submitted motions; two 'Answers'; filed, responded to and argued motions; called witnesses; and even by the defendants own accord they invoked the jurisdiction of this Court on its own initiative by seeking the Court's authority and jurisdiction over its own counterclaims filed in this Court seeking its own independent damages as against the defendant Singer. No Court rulings prohibited them from further participation in any form or fashion. No Court order denied them the privilege of using a certified court reporter.

> "[T]he fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings as are adequate to safeguard the right for which the constitutional protection is invoked."

Anderson National Bank v. Luckett, 321 U.S. 233, 246.

This court cannot possibly understand why it would be responsible for securing a qualified court reporter on

behalf of the defendants. Those duties and responsibilities fall squarely on the shoulders of the defendants and their counsel – the defendants requested the reporter – the defendants motion was granted with conditions – and the defendants failed thereafter to pursue and protect their interests as granted.

It is not the duty of the Court to provide a reporter, other that what is provided under the limited budget of the Court. It is, however, the case that this Court determine the qualifications of those persons to whom it would entrust the record of the Court for purposes of accuracy and trustworthiness of the record. The Court is not obliged to simply rely on the representations of the party seeking the assistance of an independent and qualified court reporter. A court reporter is essentially an officer of the Court, not an agent of the party paying the reporter.

II. The defendants argue to the Court that they were denied due process of law due to a lack of a perfect record of the proceedings before the Court for cause of interment inaudibles found in the Courts own recording/reporting system.

Findings of Fact

The defendants and plaintiffs were ORDERED from the bench to report any problems with the hearing transcripts to the Court on November 9, 1999, and neither party did so. Both the defendants and the plaintiffs became aware of concerns in the transcription of the taped proceedings nearly a full month prior to submitting their written conclusions, by written notice, as was the Court. In fact, after the very first proceeding it was cautioned by counsel for the plaintiffs, Wm. P. Battles, that the record

was being garbled and asked that the Court caution the speakers in reference to preserving the record. The defendants, as well as the plaintiffs, were free to make motions for new hearings or other protective motions prior to the filing of their written concluding statements, but failed to do so and instead – like the plaintiffs – submitted their closing arguments on the record as presented.

Wherein the trial record as a whole, including hearings on April 24, 1999; May 14, 1999; June 30, 1999; and November 9, 1999; along with records of the September 23rd and 24th proceedings, of 1999, are all available to this Court and the parties, and well evidence the foundation and outcome of the Courts considerations in rendering the decision to grant the Preliminary Injunction – despite the lack of a "perfect" trial record as claimed required by the defense.

The defendants knew they were obligated to put on evidence to rebut the plaintiffs evidence and simply failed to do so. Indeed, moreso than not, the record and recollection of the Court actually reflects that the majority of the evidence and testimony solicited and presented to the Court by the defendants actually went to support each and every claim of the plaintiffs as raised in these proceedings. Accordingly, the defendants failed to offer the Court barely so much as one piece of evidence that was reliably found to be admissible within the Navajo Nation Rules of Evidence, or in aid to their assertions contrary to those of the plaintiffs.

Conclusions of Law

The defendants were not denied due process pursuant to the 'harmless error' rule of ***Chapman v. California***,

386 U.S. 18, (1967) that *overturned* the case of ***Griffin***, upon which the defendants would apparently prefer the Court to rely as they assert – and for which the defendants, through counsel, had a responsibility to inform the court of, in that ***Griffin*** had been superceded by ***Chapman*** – but failed to do so.

Further, the defendants are not being denied the ENTIRE court record, as found in the cases they rely upon and therefore defendants' case cites are without merit in *this* case – but in misguiding this Court.

The Court therefore concludes that as a matter of law, notwithstanding our own Rule 61 of the Navajo Nation Rules of Civil Procedure, and in agreement to ***Chapman***, the existence of inaudible sections of the tape recordings is harmless, when the record can still remain to be considered in its whole dispositive of the findings, conclusions and orders of the Court.

As offered by the United States Supreme Court –

> *"Since* ***Chapman****, we have "consistently made clear that is it the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations."* ***United States v. Hasting****, 461 U.S. 499, 509 (1983). In* ***Hasting****, we again emphasized that "given the myriad safeguards provided to assure a fair trial, and taking into account the reality of the human fallibility of the participants, there can be no such thing as an error-free, perfect trial, and . . . the Constitution does not guarantee such a trial." Id. at 508-509."* ***United States v. Lane et al****,* 474 U.S. 438, 446 (1986).

The court here, in considering the trial record as a whole, finds the same well supports the findings and conclusions of this Court without any question in the mind of the Court – whatsoever.

III. The next argument offered by the defendants is that the Preliminary Injunction should be denied or modified because the findings go to the merits of the case.

Findings of Fact

The burden of coming forward in the seeking of a Preliminary Injunction, *premised on the case in chief* under the Navajo Nation Rules of Civil Procedure, is elementary. Pursuant to Rule 65(c) the moving party, here the plaintiffs, are put to the burden of "*presenting evidence sufficient for the court to find* ***all*** *of the following*"

> *That the moving party has or is claiming a protectable right or interest and has a high likelihood of success on the merits;*
>
> *That irreparable injury, loss, or damage, to that right or interest is likely to occur unless the preliminary injunction is issued;*
>
> *That the threatened injury, loss or damage is substantial in nature or character; and,*
>
> *That the moving party does not have an adequate remedy at law.*

Likewise, Rule 65(d) of the Navajo Nation Rules of Civil Procedures, provides, for judicial economy, not dissimilar from any other jurisdiction of our sister sovereign the United States, that:

> *Before or after the commencement of the hearing of a petition for a preliminary injunction, the court may order trial on the merits to be advanced and consolidated with the hearing of the petition.* ***Even when this consolidation is not ordered, any evidence received upon a petition for a preliminary injunction, which would be admissible upon the trial on the merits, becomes part of the record at trial and need not be repeated at trial. This subdivision shall be construed to save the parties any rights they may have to trial by jury.***

The Defendants were *warned* several times during the proceedings that they were failing to meet their responsibility of rebutting the plaintiffs evidence and testimony and that they were proceeding in nearly a fatal fashion to not only the preliminary injunction but as to the case in chief and that likewise they were thus far actually reinforcing the contentions of the plaintiffs in defense witness after defense witness, and the collective of the evidence and testimony before the Court was overwhelmingly in favor of the plaintiffs.

And accordingly,

The plaintiffs proved **absolutely** that they were being denied protectable rights which were guaranteed at law and therefore had a certain likelihood of success on the merits – which is largely reduced to damages; and,

The plaintiffs likewise proved that unless relief was granted, by way of a preliminary injunction or otherwise, that such violations on their protectable rights would continue with resulting injuries, losses, and damages.

> That the injuries, losses, and damages were substantial in both their nature and character, including injuries ranging from damages to reputation to money damages; and,
>
> And that unless a preliminary injunction was granted the harm, injuries, damages, and losses, would continue unimpeded.

Likewise, the Court is obliged by Rule of Court and in the exercise of judicial economy to receive during the proceedings on the preliminary injunction evidence which is likewise admissible in the case in chief *as though occurring during the trial on the merits*, and that evidence becomes a part of the record at trial and need not be repeated at trial. See Rule 65(d). Such preservation of the record does not go to taint the trial by jury requested by the plaintiff, but does substantially reduce their burden of proof which has already well been met even as to the case in chief. Whereas, as the Court would note, that but for the preservation of a trial by jury, in most instances of preliminary injunctions it is more normal to actually combine the proceedings in chief with the proceedings for the preliminary injunction.

For example, Lauren Schafer, a defendant's witness, admitted on September 24, 1999, that after an exhaustive study of Mrs. Singer's records, she did not have one piece of evidence as to Mrs. Singer's intent to commit fraud.

For example, the Court observed that the person who initiated the termination process, was also the grievance hearing officer (unbeknown to Singer) and admitted he had a problem with being so thinking that it was improper for him to proceed by his won judgment but did nonetheless.

For example, no defenses were made for the treatment of Fred Riggs and Al Dickson, except that the time card errors diminished after the discipline meted out, supporting the theft claim of the plaintiffs in that their reputations were taken without their permission for use of the district to discourage time card errors and for speaking out regarding discrimination and unequal treatment of Native Americans in employment with the Health Services District.

For example, the defense presented evidence that the reason that Singer was fired was because she allegedly called in to work to have someone punch her time card, and then offered testimony of one witness that such conduct was common among the employees of the Health Services District, and so common in fact that she herself had certainly done the same thing "at least a hundred times" but had never even been disciplined in any form or fashion. This witness was non-Indian.

For example, human beings being somehow seriously referred to in such a way as to make people believe because they are Native Americans they are being called dogs – is only something this Court would prefer to hear the evidence on only one time – in its life time.

For example, coming to understand that because Native American elders, grandmothers, and grandchildren are being denied medical care and treatment even as under a direct government contract with the United States Government to provide health care to Native Americans because they are being arbitrarily required "to show their Certificate of Indian Blood" to actually receive necessary health services, when the required documentation for Health Services through the Indian Health Service is a

"Beneficiaries Identification Card" at most, is something this Court would have preferred to have never heard.

The Court's resources, and the plaintiffs resources are limited – and the findings, facts and case are clear even as to the merits in chief.

Conclusions of Law

The findings of the Court had no alternative but to reach to the merits, as such is the primary burden of the plaintiffs coming forward. The plaintiff had a clear duty to demonstrate to the Court that they are substantially entitled to judgment on their case in chief, in order to prevail on the preliminary injunction. The defendants, likewise, failed to put on any credible evidence to rebut the volume of testimony and evidence of the plaintiffs, after having ample opportunity to have done so.

The Court is therefore well within its rights to find to the merits, the same way as a Court may find for a party if the plaintiff fails to prosecute a claim, in order to protect the due process rights of the plaintiffs, and to protect the Court's processes from being used for harassment and other wasteful and abusive purposes.

The Court, given the proceedings to date, the testimony and evidence of record, is obligated to grant relief to the plaintiff and provide relief to those harmed, damaged, and injured.

> *"Courts invested with the judicial power of the United States have certain inherent authority to protect their proceedings and judgments in the course of discharging their traditional responsibilities."* ***Chambers v. NASCO, Inc.****, 501 U.S.*

32, 43-46 (1991); ***Link v. Wabash R. Co.,*** *370 U.S. 626, 630-631 (1962). The Supreme Court recognized in* ***Roadway Express,*** *that outright dismissal of a lawsuit, which has been upheld in* ***Link*** *is a particularly severe sanction, yet is within the court's discretion. 1st Sess., 6 (1852);* ***Roadway v. Piper,*** *447 U.S. 752, 756 (1980)."*

The Preliminary Injunction was addressed to rectifying the harm done. The defendants' recommendation fails to address the financial harm suffered by the plaintiffs which has injured their families, as well as, failing to recognize, much less rectify, the harm to their reputations and the patients. As such, the Court finds the Injunctive Order is well within the three prongs of ***Missouri v. Jenkins***, ___ U.S. ___ (1995), at page 16. The defendants neither recognized the three prong test of ***Missouri*** in their pleadings, nor recognize the Navajo tradition of compensating injury with money or other things of recognizable uniform value.

The defendants' definition of 'status quo' differs from the Court's, in that, the Court's definition wishes to place the plaintiffs in nearly as good a position as they would have been without the harm of the defendants and that includes financially.

IV. The defendants rather vaguely continue to misstate and minimize the Court's jurisdiction.

Findings of Fact

A 'forum of resolution' and the premise of having a hearing for injured parties among Native American people predates the European settlers and is well grounded in Navajo customs and traditions. This tradition has

continued through the continuum of history, and in contemporary time has come to include the provisions of the United States Congress by way of the 1968 Indian Civil Rights Act which colored tribal courts with federal legislative mandates in 25 USCS § 1301.

And accordingly the Court cites to tribal code and ***Montana*** and ***Strate***, to further its finding of jurisdiction.

Conclusions of Law

The Court has jurisdiction over the defendants partly because they are the named parties who have committed acts within the Navajo Nation territorial boundaries, and as well because the defendants became plaintiffs by filing their counterclaims. In accord with ***Dodge v. Nakai***, 298 F. Supp. 17 (Ariz. dist. 1968) and ***Clark v. Barnard***, 108 U.S. (1883). This Court has jurisdiction.

Alternatively, the Court also has jurisdiction over the defendants because, even if, the defendants are an 'arm of the state', (which they have not shown any evidence to support), the defendants waived any rights of immunity when they filed counterclaims and fully participated in the Court proceedings. The Court therefore concludes that it has legal foundations for jurisdiction in this case, within the Navajo Nation's inherent sovereignty, the Navajo Nation Code, 25 U.S.C.S. §1301 and 1302, the ***Montana*** and ***Strate*** decisions, and the United States Supreme Court rulings in ***Clark v. Barnard***, 108 U.S. (1883) as cited approvingly in ***College Savings Bank v. Florida Prep Aid Postsecondary Education Expense Board et al.***, ___ U.S. ___, decided June 23, 1999.

> *"We are relieved, however, from its consideration by the* ***voluntary appearance*** *of the state in*

> *intervening as a claimant of the fund in court. The immunity from suit belonging to a state, which is respected and protected by the constitution within the limits of the judicial power of the United States,* ***is a personal privilege which it may waive at pleasure; so that in a suit, otherwise well brought, in which a state had sufficient interest to entitle it to become a party defendant, its appearance in a court of the United States would be a voluntary submission to its jurisdiction****, while, of course, those courts are always open to it as a suitor in controversies between it and [108 U.S. 436, 448] citizens of other states."* ***Clark v. Barnard****, 180 U.S. 436, 448 (1883).*

In conclusion, the Court finds the arguments and case cites of the defendants without merit or legal foundations. The Court, despite previous denials, now attempt to justify their placing of Native American patients in danger in a cloud of "confusion" on the 14th day of May, 1999. The prior Temporary Restraining Order directed the defendants to not interfere with the Clinic operations. This effort of the defendants at this juncture lacks sincerity. The defendants' motion to dissolve the preliminary injunction lacked even so much as an apology for the harm they have done over the last nine months of billing indigent Native American patients discouraging their attendance to both emergency and routine health care. The motion of the defendants lacks even the smallest appreciation for their blatant violations of civil rights of the plaintiffs that has torn a family apart, and grossly harmed the plaintiffs, and innocent patients and families relying on the clinic for health care.

Likewise such cold, insensitive, and recalcitrant attitudes on the part of the defendants further goes to illustrate the defendants bad faith to these proceedings and presents a foundation from which so much prejudice can grow from like a scavenging parasite of people ignorant of the harm of their malignant acts, and who lack any remorse for their harm to the plaintiffs, the patients and this Court.

The Preliminary Injunction, and findings of the Court, accordingly shall remain undisturbed. To do so would continue to place Navajo employees and patients who the defendants interact with at both Montezuma Creek Clinic and at Monument Valley, in harm's way. Navajo common law, is customs and traditions, mandate that the Court protect the people, and this Court shall not hesitate to exercise all its powers to do so.

The Motion to Dissolve or Modify the Preliminary Injunction Order be and is, therefore, denied.

IT IS THEREFORE ORDERED that pursuant to the Navajo Nation Rules of Civil Procedure at Rule 11 and this Court's tribal and federal authorities, and the Court's recognized inherent authority to protect its judicial processes, the Court hereby ORDERS as follows pursuant to its Preliminary Injunction:

That the Motion to Dissolve or Modify the Preliminary Injunction Order be and is hereby denied.

The Preliminary Injunction as issued shall be carried out immediately, and no later than the 3rd day of March, 2000, in all respects, with written confirmation delivered to this Court on or by that date, or be subject to the contempt powers of this Court.

That the defendants be and are hereby ordered to immediately reinstate Mrs. Singer as a x-ray and ultrasound technician making her whole to the 1st day of November, 1998, not later than the 3rd day of March, 2000, with written confirmation delivered to this Court on or by the 3rd day of March, 2000, or be subject to the contempt powers of this Court.

That the defendants be and are ordered to immediately reinstate the plaintiff Mr. Riggs to his previous position of employment and compensation as occurring at the time of his reduction in force and reduction of pay with written confirmation delivered to this court on or by the 3rd day of March, 2000, or be subject to the contempt powers of this Court; and,

That the defendants be and are hereby ordered to immediately tender to Mr. Dickson full time status as an employee of the Montezuma Creek Clinic and that he be paid all commensurate back pay and benefits as may be due to him from the occasion of his being eligible for such status; and provide written confirmation of such compliance on or by the 3rd day of March, 2000, or be subject to the contempt powers of this Court; and,

That the defendants be and are hereby ordered to immediately pay all due income from whichever source derived within the District, including but not limited to full back pay and compensation as well as back benefits to the plaintiffs, including but not limited to retirement benefits and other compensations regularly received by the plaintiffs with all such compensations to be credited and/or paid immediately with confirmation of such compliance delivered in writing to this Court on or by the 3rd day of March, 2000, or be subject to the contempt powers of this court; and,

That the defendants be and are hereby ordered to delete and expunge all the charges and writings pertaining to the December 2nd through the December 8th 1998 charges of fraud, discipline, and termination, from Mr. Riggs and Ms. Singer's personnel file, with written compliance delivered to this court on or by the 3rd of March, 2000, or be subject to the contempt powers of this Court; and,

That the defendants be and are hereby ordered to not, within the territorial jurisdiction of the Navajo Nation, put Ms. Singer, and other like managers, and Mr. Riggs, and other like Physicians Assistants, on hourly time card keeping requirements for the purposes of salary and compensations or otherwise, and provide a copy of the written policy to this effect on or by the 3rd day of March, 2000, or be subject to the contempt powers of this Court; and,

That the defendants be and are hereby ordered to not interfere with clinic operations or move any clinic personnel, or be subject to the contempt powers of this Court; and,

That the defendants be and are hereby ordered to issue full payment of attorney's fees, costs, and expenses associated with these proceedings to date to be paid by cashier's check within five working days of the issuance of the injunction and to be paid not later than the 31st day of March, 2000, by and through the Registry of this Court, or each and every one of the defendants shall be subject to execution on their personnel properties, and otherwise individually subject to the contempt powers of this Court; and,

That the prior Order of the court waiving any security deposit of the part of the plaintiffs be and is hereby affirmed; and,

That the Defendants be and are hereby prohibited from:

Eliminating any Emergency Medical Technician services and coverage within the territorial jurisdiction of the Navajo Nation in service to the local Navajo and other Native American population for or on behalf of the Montezuma Creek Clinic or any other facility or activity of the San Juan Health Services District conducted within the territorial jurisdiction of the Navajo Nation; and, Interfering with the laboratory services to the Montezuma Creek Clinic or any other facility or activity of the San Juan Health Services District conducted within the territorial jurisdiction of the Navajo nation; and,

Interfering with the pharmaceutical services provided to the Montezuma Creek Clinic or any other facility or activity of the San Juan Health Services District Conducted within the territorial jurisdiction of the Navajo Nation

That the defendant shall immediately make payment of any and all current and past due billings of the Montezuma Creek Clinic occurring before the 1st day of January, 2000, and provide written confirmation of such payments on or before the 3rd day of March, 2000, or be subject to the contempt powers of this Court; and,

That the defendants be and are prohibited from interfering with any form of patient care being provided by the Montezuma Creek Clinic; and,

That the defendants be and are hereby immediately ordered to cease billing eligible IHS patients for medical services; and,

13. That the Court further hereby Orders the defendants to assist the Montezuma Creek Clinic and the local Navajo Chapters, and chapter governments, by any means necessary, including Navajo and Ute language announcements on Navajo Nation wide radio; letters, etc. to help diabetic IHS patients to return to the Montezuma Creek Clinic for treatment, including informing such Native American patients that as an IHS patient they do not have to directly pay for their health care treatment at the Montezuma Creek Clinic, with written confirmation of such compliance provided to this Court on or before the 3rd of March, 2000, or be subject to the contempt powers of this Court; and,

14. That the Court further Orders that the plaintiffs report any such interference, harassment, or intimidation of Montezuma Creek Clinic operations, patients, and employees immediately to this Court; and,

That the proceedings in chief herein be and are hereby scheduled for initial pretrial conference on the 18th day of APRIL, 2000, unless these proceedings are not earlier settled and compromised by the parties by stipulation on the limited factual; legal; and damage issues remaining as previously noted to the Court.

So Signed and Ordered this 1 day of March, 2000.

/s/ [Illegible]
JUDGE, District Court of the
Navajo Nation

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[1] That in the event that the defendants fail to obey the Order of this Court, commencing the 4th day of March, 2000, the defendants shall be fined at the rate of $10,000.00 (Ten Thousand Dollars) per day, for each and every day the Order of this Court is not carried out in its entirety.* * * * *

[2] That each and every personal defendant and defendants counsel will pay $1000 per day of the $10,000 daily fine beginning on March 2, 2000, from their own personal assets

[3] That any and all appeals or attempted appeals will not forestall these fines if the Preliminary Injunction Order is not carried out in accord with this Order.

[4] Such fines are a fair and just means for this Court to protect its judicial processes, and to ensure its orders that protect the people, will be carried out.

IN THE DISTRICT COURT OF THE NAVAJO NATION JUDICIAL DISTRICT OF SHIPROCK, NEW MEXICO

DONNA SINGER, Fred Riggs C#18570; Alison Dickson C#212,765. Plaintiffs, vs. **SAN JUAN COUNTY**; San Juan Health, Service District; Rick Bailey; Reid Wood; Lauren Schafer; Craig Halls; Commissioner Bill Redd; Roger Atcitty; Commissioner Mark Maryboy; John Lewis; Commissioner J. Tyron Lewis; Karen Adams Patsy Shumway; and other Johon and Jane Does as yet unnamed in their personal and official capabilities, Defendants.	**SR-CV-162-99-CV** **SPECIAL ORDER IN AID TO SATISFACTION OF PRELIMINARY INJUNCTION**

NOW COMES THE COURT and having received and reviewed the plaintiffs' motion for a special order and finding good cause therein hereby Orders as follows:

1. That the defendants are hereby restrained from alienating any and all money, property and assets of any type until the plaintiffs are paid their relief as granted in the Preliminary Injunction Order; and.

2. That a list of all assets be immediately given to the plaintiffs since the defendants admitted in their concluding statement that the defendants state of finances were in a precarious position; and.

3. That defendants immediately list the plaintiffs first in order of priority as secured creditors on the files of the County Recorder of San Juan County and any other county wherein their property is located; and.

4. That the defendants provide a complete income tax return for 1998 and 1999, including all attachments and schedules submitted to the IRS with the returns; and.

5. That any disobedience to this Order will be viewed as contempt of the Court and warrants for the arrest of the defendants disobeying this Order will issue; and

6. That the plaintiffs are granted leave to seek enforcement of this Order as appropriate in any Utah or federal Court where it will be enforce pursuant to principles of comity and applicable law.

So signed and this 6 day of March ~~February~~, 2000.

/s/ [Illegible]
JUDGE RAYMOND A. BEGAYE

IN THE DISTRICT COURT OF THE NAVAJO NATION JUDICIAL DISTRICT OF SHIPROCK

DONNA SINGER, Fred Riggs C#18570; Alison Dickson C#212,765; Plaintiffs, vs. **SAN JUAN COUNTY;** San Juan Health Service District; Rick Bailey; Reid Wood; Lauren Schafer; Craig Halls; Commissioner Bill Redd; Roger Atcitty; Commissioner Mark Maryboy[1]; John Lewis; Commissioner J. Tyron Lewis; Karen Adams; Patsy Shumway,[2] and R. Dennis Ickes, Farmers/Truck Insurance Co. and John and Jane Does as yet unnamed in their personal and official capabilities, Defendants.	**SR-CV-162-99-CV** **ORDER MANDATING THAT ALL DEFENDANTS' TO BE BOUND BY THE PRELIMINARY INJUNCTION ORDER**

Now comes the Court, having received and reviewed the plaintiffs' motion to bind the defendants R. Dennis Ickes, Esq. and Farmer's Insurance Group of Companies and/or Truck Insurance by the Preliminary Injunction

[1] In his official capacity only.

[2] In her official capacity only.

Order, based upon the findings of the Court in the Preliminary Injunction Order, after approximately 6 hearings over a nine month period. The Court bases this Order upon the following findings of fact and Conclusions of Law;

1. On December 28, 1999, the Court made factual findings pertaining to misrepresentation of case law and facts, intimidation of witnesses, spoilation of evidence, upon which the plaintiffs have made a motion for a supplemental pleading, and that said activities were known, or should have been discovered easily by a reasonable investigation that is required pursuant to NNRCP at Rule 11; and,

3. That the new defendants, Mr. Ickes and Farmer's Insurance Group of Companies and/or Truck Insurance, as based upon the Court's findings, did participate in these activities prior to the issuance of the preliminary injunction order, and,

4. That the new defendants, Mr. Ickes and Farmer's Insurance Group of Companies and/or Truck Insurance, did participate fully in all the proceedings from approximately April 23, 1999 through November 9, 1999, and in the defendants' motion to dissolve or modify the Preliminary Injunction Order, dated December 28, 1999; and,

5. That Mr. Ickes, and Farmer's Insurance Group of Companies and/or Truck Insurance Company, as his employer, were aware, or should have been aware, of the actions of the defendants, and their own actions in privity with the defendants, based upon a reasonable investigation as required pursuant to NNRCP at Rule 11; and,

Therefore, the Court now Orders that Mr. Ickes and Farmer's Insurance Group of Companies and/or Truck Insurance Company are to be bound in privity with the

previous defendants in this action as now identified John and Jane Does, who prolonged the proceedings, and further deprived the plaintiffs' of due process and equal protections of the law, and are hereby bound by the Preliminary Injunction Order of December 28, 2000, and their names will be herein after, added to the defendants' caption, and are officially declared to have responsibility for all legal liabilities incurred by the defendants as declared in the December 28, 1999, Preliminary Injunction Order.

Signed this 27 April day of 2000.

/s/ [Illegible]
Judge Raymond Begaye